LIBRARY
JUN 19 1969
SUPREME COURT, U.S.

4

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 81

RECTOR SIMMONS, JR. and ROSE SIMMONS,
Appellants,

vs.

THE HOUSING AUTHORITY OF
WEST HAVEN, CONNECTICUT,
Appellee.

On Appeal From The Appellate Division Of
The Connecticut Circuit Court

MOTION OF THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF AMICUS CURIAE

ALLAN ASHMAN,
1155 E. 60th Street,
Chicago, Illinois 60637,
Attorney for Amicus Curiae
NATIONAL LEGAL AID AND
DEFENDER ASSOCIATION.

MIDWEST LAW PRINTING CO., CHICAGO 60601, FINANCIAL 6-2929

INDEX

	PAGE
Motion for Leave to File a Brief Amicus Curiae	1
Interest of Amicus Curiae	4
Opinion Below	5
Jurisdiction	5
Statutory Provision Involved	5
Question Presented	6
Statement of the Case	6
Summary of Argument	6
Argument:	
I. The Surety Bond Requirement Of Sec. 52-542 Of Connecticut General Statutes Effects An Arbitrary And Invidious Discrimination Among Citizens On The Basis Of Wealth In Violation Of The Constitution Of The United States In That Its Practical Effect Is To Deny Indigent Citizens The Right To Appeal In Cases Wherein A Wealthy Person Would Be Able To Appeal	7
A. The Equal Protection Clause Requires That If A State Provides An Appeal To Some It Cannot Deny It To Others Because Of Their Poverty	7
B. Persons Should Not Be Denied Access To State Courts Because Of Their Poverty	10
II. The Equal Protection Clause Is Not Limited In Its Application To Criminal Cases	14

III. The Right Of An Indigent Tenant To Remain In Possession Of His Shelter And Appeal A Judgment Of Eviction Without Posting A Surety Bond For Rent Is Crucial To The Proper Disposition Of This Case 17

A. An Indigent Tenant Should Not Have To Surrender Possession Of His Shelter In Order To Appeal A Judgment Of Eviction 17

B. Appellate Review Is Vital To The Vindication Of An Individual Tenant's Rights And To The Development Of A Just And Equitable Body Of Landlord-Tenant Law 18

C. The Existence In Other States Of Surety Bond Requirements That Serve As Effective Preconditions To Appeal In Actions Of Summary Process Makes This An Issue Of National Concern 20

Conclusion 22

Appendices:

A. State Bond Requirements Imposed On Tenants Who Wish To Remain In Possession Of Their Shelter While Appealing A Judgment Of Eviction 1a

B. Questionnaire Sent To All Civil Legal Aid Offices And Selected Responses Thereto 8a

Table Of Authorities

Cases:

Barber v. Gladden, 298 P. 2d 986 (Ore. 1956) 16
Barbier v. Connolly, 113 U.S. 27 (1885) 15
Boyd v. United States, 116 U.S. 616 (1886) 18
Burns v. Ohio, 360 U.S. 252 (1959) 15
Douglas v. California, 372 U.S. 353 (1963) 8, 9
DuPont v. Family Court for New Castle County, 153 A. 2d 189 (Del. 1959) 16

Griffin v. Illinois, 351 U.S. 12 (1956) 8, 9, 14
Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966) 10, 15
McKane v. Durston, 153 U.S. 684 (1894) 7
NAACP v. Button, 371 U.S. 415 (1963) 19
Rapid Transit Corp. v. City of New York, 303 U.S. 573 (1938) 11
Reynolds v. Smith, ... U.S. ....., 89 S. Ct. 1322 (1969) 10
Sanks v. Sanks, CCH Poverty L. Rep. ¶ 9270, at 10,514 (Ga. Civ. Ct., Fulton County, Oct. 2, 1968) .. 13
Shapiro v. Connecticut, ... U.S. ....., 89 S. Ct. 1322 (1969) 10
Smith v. Bennett, 365 U.S. 708 (1961) 15
Washinton v. Legrant, ... U.S. ....., 89 S. Ct. 1322 (1969) 10
Williams v. Shaffer, 385 U.S. 1037 (1967) 16, 17

Constitutional Provisions:

United States Constitution
Fourteenth Amendment 6, 8, 10, 14, 15, 16

Statutes:

Ala. Code tit. 7, Sec. 985 12
Ariz. Rev. Stat. Sec. 12-1179 12
Conn. Gen. Stat. Ann. Sec. 52-263 8
Conn. Gen. Stat. Ann. Sec. 52-542 ..... 6, 7
Ga. Code Ann. Sec. 61-303, 305 12
N.C. Gen. Stat. Sec. 42-34 12
W. Va. Code Sec. 60-15-2 12

Other Authorities:

Comment, *Tenant Unions: Collective Bargaining and The Low Income Tenant*, 77 Yale L. J. 1368 (1968) 19
Developments in the Law, *Equal Protection*, 82 Harv. L. Rev. 1065 (1969) 8
Note, *Indigent's Right to Counsel in Civil Cases*, 76 Yale L. J. 545 (1967) 10

OEO-CCH Poverty L. Rep. 7, 13
Report Of The National Advisory Commission On Civil Disorders (paperback ed. 1968) 19
Schoshinski, *Remedies of the Indigent Tenant: Proposal For Change,* 54 Geo. L. J. 519 (1966) 17, 19
Shier, *Protecting the Interests of the Indigent Tenant: Two Approaches,* 54 Calif. L. Rev. 670 (1966) 18
Shoor, Slums And Social Insecurity (1964) 18
Tenant Rent Strikes, 3 Colum. J. L. & Soc. Prob. 1 (1967) 19
P. Wald, Law And Poverty: 1965 Report To The National Conference On Law And Poverty (1965) 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1232

RECTOR SIMMONS, JR. and ROSE SIMMONS,

Appellants,

VS.

THE HOUSING AUTHORITY OF WEST HAVEN, CONNECTICUT,

Appellee.

On Appeal From The Appellate Division Of The Connecticut Circuit Court

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE*

The National Legal Aid and Defender Association respectfully moves for leave to file a brief *amicus curiae* in this case in support of the appellants.

The National Legal Aid and Defender Association, hereinafter called NLADA, is a non-profit corporation whose primary purpose is to assist in providing more and better legal services for the poor. Its members in-

* Consent has been granted by Appellants. Appellee denied Amicus' request.

clude the great majority of defender offices, coordinated assigned counsel systems, and legal aid societies in the United States. The NLADA also has 1600 professional members, many of whom are practicing attorneys who represent indigent persons in criminal and civil matters.

The NLADA and its members believe that each citizen, rich or poor, is entitled to equal justice under law. To deny justice to any individual is to deny him one of the most critical rights of citizenship. We agree with the statement of former Chief Justice Charles Evans Hughes that "There is no more serious menace than the discontent which is fostered by a belief that one cannot enforce his legal rights because of poverty."

More people probably are affected directly by the administration and construction of the kind of summary process statute at issue than perhaps by any other law. Every day throughout the country, individuals are made parties to eviction proceedings upon which hinge their most prized possession and the most important aspect of their daily lives—their homes and shelter for their children. The NLADA feels that it is of the utmost importance, and a public concern of the highest magnitude, that the content and administration of summary process laws that so vitally and immediately affect the lives of so many people be fair and equitable.

The NLADA moves for leave to file this brief because we believe that it is not merely a vague "public policy" that demands that an individual's meaningful right to appeal in actions of summary process be protected by this Court but that it is the inescapable command of the United States Constitution. We contend that the harm resulting to appellants and to our entire system of jus-

tice from the practice of Connecticut and other states employing a system of appellate practice that in its practical application denies poor people the right to appeal in actions of summary process warrants the fullest possible exposition of the serious constitutional issues involved.

It is our hope that our brief will aid the Court by emphasizing this aspect of the litigation and also by attempting to cast light on the issues from a national perspective. The brief includes questionnaires circulated by the NLADA among its civil member offices throughout the country. We believe that the responses to this questionnaire include material supplemental to the appellants' brief that should be useful to the Court in its consideration of this case.

In view of the direct importance of this case to legal aid attorneys serving the poor throughout the country, and to the poor themselves, the executive committee of the NLADA has authorized and instructed the NLADA staff to prepare and file an amicus brief in this case if so permitted by the Court.

Wherefore, it is respectfully prayed that this motion for leave to file the annexed brief *amicus curiae* be granted.

/s/ ALLAN ASHMAN,
1155 E. 60th Street,
Chicago, Illinois 60637,

Attorney for Amicus Curiae
NATIONAL LEGAL AID AND DEFENDER ASSOCIATION.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1232

RECTOR SIMMONS, JR. and ROSE SIMMONS,
Appellants,

vs.

THE HOUSING AUTHORITY OF WEST HAVEN, CONNECTICUT,
Appellee.

On Appeal From The Appellate Division Of The Connecticut Circuit Court

---

BRIEF OF THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

We respectfully refer the Court to the preceding motion for leave to file this brief wherein the interest of the *amicus curiae* is set forth.

OPINION BELOW

The opinion of the Appellate Division of the Connecticut Circuit Court was unreported. It is set out in the appendix to Appellants' Jurisdictional Statement at p. 1a. The Connecticut Supreme Court of Errors on June 25, 1968 denied petition by appellants for certification for appeal from the Appellate Division of the Circuit Court, 243 A. 2d 83.

JURISDICTION

The jurisdiction of this Court to review by appeal the judgment of the Appellate Division of the Connecticut Circuit Court is conferred by 28 U.S.C. 1257 (2). Probable jurisdiction was noted on April 7, 1969.

STATUTORY PROVISION INVOLVED.

Sec. 52-542 of the General Statutes of Connecticut (Gen. Statutes of Conn., Vol. IX, 1965 Supp., p. 135):

> *Sec. 52-542. Bond on appeal; stay of execution*
>
> When any appeal is taken by the defendant in an action of summary process, he shall give a sufficient bond with surety to the adverse party, to answer for all rents that may accrue or, where no lease had existed, for the reasonable value for such use and occupancy, during the pendency of such appeal, or which may be due at the time of its final disposal; and execution shall be stayed for five days from the date judgment has been rendered, but any Sunday or legal holiday intervening shall be excluded in computing such five days. No appeal shall be taken except within said period, and if an appeal is taken

within said period execution shall be stayed until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken for the purpose of delay; and if execution has not been stayed, as hereinbefore provided, execution may then issue, except as otherwise provided in sections 52-542 to 52-548, inclusive.

QUESTION PRESENTED.

Does the surety bond requirement of Sec. 52-542 of the Connecticut General Statutes effect an arbitrary and invidious discrimination among citizens on the basis of wealth in violaton of the Equal Protecton Clause of the United States Constitution?

STATEMENT OF THE CASE

The NLADA adopts Appellants' Statement.

SUMMARY OF ARGUMENT

An indigent tenant should not be required to post a surety bond that he cannot secure or to surrender possession of his shelter in order to appeal a judgment of eviction. The surety bond requirement of Sec. 52-542 of the Connecticut General Statutes violates the Equal Protection Clause of the Constitution in that its practical effect is to deny indigent citizens the right to appeal in cases wherein a wealthy person would be able to appeal. The refusal of the trial judge in the case before this Court to permit appellants to post a use and occupancy bond clearly resulted in a discrimination against the appellants based solely upon their poverty.

ARGUMENT

I.

THE SURETY BOND REQUIREMENT OF SEC. 52-542 OF CONNECTICUT GENERAL STATUTES EFFECTS AN ARBITRARY AND INVIDIOUS DISCRIMINATION AMONG CITIZENS ON THE BASIS OF WEALTH IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION OF THE UNITED STATES IN THAT ITS PRACTICAL EFFECT IS TO DENY INDIGENT CITIZENS THE RIGHT TO APPEAL IN CASES WHEREIN A WEALTHY PERSON WOULD BE ABLE TO APPEAL.

A. The Equal Protection Clause Requires That If A State Provides An Appeal To Some It Cannot Deny It To Others Because Of Their Poverty.

In many states, the right to remain in possession and appeal a judgment of eviction is conditioned upon a tenant's posting an appeal bond. See CCH *Poverty L. Rep.* ¶ 2235. In Connecticut, Section 52-542 of the General Statutes makes the posting of a bond with surety for all rents that may accrue during the pendency of a tenant's appeal a necessary precondition to any appeal by a tenant in an action of summary process. In the case presently before this Court, appellants' appeal from the judgment of eviction was dismissed for want of a surety bond. (R. 39, p. 137) The practical effect of the Connecticut statute is to deny indigent tenants the opportunity for appellate review in actions of summary process.

This Court has declined to find a constitutional right to appeal as such (See e.g. *McKane* v. *Durston*, 153 U.S. 684 (1894), but it has noted that the Equal Protection Clause does require that if a state provides an appeal

to some it cannot deny it to others because of their inability to pay, even where such a denial can be rationally defended. *Douglas* v. *California*, 372 U.S. 353-58 (1963). We believe that the right to take an appeal in an action of summary process is of "fundamental" importance and is deserving of special protection under the Equal Protection Clause. Access to appellate courts in actions of summary process should turn neither upon a person's economic status nor upon his surrendering possession of his shelter.

Even if this Court should continue to hold that Connecticut is not constitutionally compelled to make appellate review available as a matter of right, we contend that once Connecticut did provide for a system of appellate review in actions of summary process (a system ostensibly available to all citizens) it could not do so in a way that operated to deny access to review to appellants solely because of their poverty. See Developments in the Law, "Equal Protection," 82 *Harv. L. Rev.* 1065, 1178 (1969).

Prior to 1961, the proper procedure to obtain a review of alleged errors of law in a landlord's summary process action in Connecticut was by writ of error. See Conn. Gen. Stat. Ann. Sec. 52-263. In 1961, the Connecticut Legislature amended Sec. 52-263 specifically to provide for appellate review in actions of summary process. Pub. Act 509, Sec. 2, (1961). There appears, then, a clear determination on the part of the state of Connecticut to make appellate review available in a landlord's summary process action to all of its citizens as a matter of right.

Just as Illinois in *Griffin* v. *Illinois*, 351 U.S. 12 (1956), made an unjustified distinction between those who were

able to purchase transcripts and those who were not, so, in the case presently before this Court, Connecticut has made an unjustified distinction between those who can appeal in actions of summary process and those who cannot. The specific provision at issue in *Griffin* did not expressly discriminate against indigents as a group. Illinois had not declared that an indigent could not have a transcript. Because the practical effect of the Illinois appellate scheme operated just the same as an express prohibition, however, this Court treated the provision as if the indigent had been specifically excluded. Similarly, in *Douglas* v. *California,* 372 U.S. 353 (1963), this Court concluded that, although California was pursuing the otherwise legitimate objective of providing counsel for an appeal only for non-frivolous claims, it had created a situation in which the well-to-do could always have a lawyer—even for frivolous appeals—whereas the indigent could not.

Connecticut has not declared that an indigent cannot appeal an order of eviction. Neither has it declared that no person with assets under a certain amount would be guaranteed the right to appeal in a landlord's summary process action. However, in requiring a surety bond as a precondition to appeal in a landlord's summary process action, Connecticut has, like Illinois and California, ignored private inequalities of wealth. In *Griffin,* this Court required non-discriminatory treatment with respect to satisfying what it took to be the interest really at stake—that of actually being able to acquire a transcript in order to bring an effective appeal. Here the interest at stake is that of actually being able to secure a surety bond in order to remain in possession and appeal a judgment of eviction.

B. Persons Should Not Be Denied Access To State Courts Because Of Their Poverty.

The National Legal Aid and Defender Association does not mean to imply that Connecticut must equalize the impact on rich and poor alike of all its actions and institutions; however, the establishment by a state of a forum for enforcing claims and vindicating legal rights appears so fundamental that it would seem unthinkable to permit a state to close that system to any person because of his relative poverty. See Note, "Indigent's Right to Counsel in Civil Cases," 76 *Yale L. J.* 545, 550 (1967). Equal justice, perhaps unlike equal privileges on a municipal golf course, is a "defining condition of citizenship." *Id.* 550. In *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), a $1.50 poll tax was viewed by this Court as treating those unable to pay as second-class citizens. Similarly, when Connecticut requires its citizens to post a surety bond in order to appeal in an action of summary process, the state is treating those who cannot meet this financial requirement as second-class citizens. A state that provides justice through an appellate process cannot condition that grant upon the ability to pay of those who are intended to benefit from it.

Recently, this Court held that a classification of welfare applicants according to whether they lived in a state for one year violated the Equal Protection Clause. See *Shapiro* v. *Connecticut*, *Washington* v. *Legrant*, *Reynolds* v. *Smith*, ... U.S. ....., 89 S. Ct. 1322 (1969), (37 U.S. Law Week 4333). In so holding, this Court noted that since the classification touched upon the fundamental right of interstate movement, its constitutionality must be judged by stricter standards of whether it promotes a "compelling" state interest. *Id.* at 4339. Previously, a

statute was held not to deny equal protection if it could be said to be rationally related to a legitimate governmental objective. See e.g. *Rapid Transit Corp.* v. *City of New York,* 303 U.S. 573, 578 (1938). Even if this Court were to hold that the right to appeal in a landlord's summary process action is not a *fundamental right* so as to require that the constitutionality of the classification be judged against the stricter standard of whether it promotes a compelling state interest, the classification in question must still be judged by whether it is rationally related to a legitimate governmental objective. We contend that not only does the classification fail to promote a compelling state interest but that it is not rationally related to a legitimate governmental objective.

The only legitimate interest Connecticut might have in providing for a surety bond as a precondition to appeal in an action of summary process would be to protect the landlord from loss of rent from an indigent or insolvent tenant in the event the appeal is resolved in the landlord's favor. This interest must, in turn, be balanced against the importance of assuring equal access to the appellate process in a landlord's summary process action. If this Court concludes that the state of Connecticut has a legitimate interest in "saving the landlord harmless" from losses of rent that might occur during the pendency of an appeal, this Court must still weigh the practical effect of the surety bond requirement as a precondition to appeal as opposed to alternative procedures that both permit access to the appellate courts and protect landlords from loss.

There seems to be little question but that the Connecticut statute generally prohibits poor tenants from pursuing rightful appeals. By definition, the poor are un-

able to post such a bond. In the case before this Court, it was estimated that at the rate of $72 per month, the claimed rent (R. 2, p. 6), a bond of at least a few hundred dollars, (approximately three months' rent) would be required to protect the landlord from delays in the appellate process.* Yet the financial affidavit filed with the appellant's motion to waive the bond (R. 32, p. 64) showed that appellants had no liquid assets. No surety company would write such a bond without liquid collateral in the full amount of the bond. (R. 32, p. 63)

There are no available statistics to document the effect of the bond requirement on the number of appeals that are actually pursued in Connecticut in actions of summary process. Analogous figures, however, indicate that probably few summary ejectment actions are appealed in those jurisdictions requiring a surety bond. For example, a Georgia "Tenant Bond" statute provides for a full *hearing* in any action of summary process upon the posting of a bond equal to double the rent to become due in six months. See Ga. Code Ann. §61-303, 305. Recently, a trial court in Fulton County, Georgia, held these statutes unconstitutional and noted that: "The uncontradicted evidence in these proceedings show the defendants are indigent and unable to obtain bonds; this situation takes on increasing importance when considered in the light of the evidence that during the year 1967 more than 19,000

---

* Many states have far more onerous bond requirements than does Connecticut. For example, both West Virginia (W. Va. Code §60-15-2) and North Carolina (N.C. Gen. Stat. §42-34) require a tenant in an action of summary process to post bond in the amount of one year's rent, while Arizona (Ariz. Rev. Stat. §12-1179) and Alabama (Title 7, §995 Code of Alabama) require an appeal bond of double the yearly rent of the premises. For these and other state statutes requiring surety bonds as preconditions to appeal in actions of summary process see Appendix A *infra*.

dispossessory warrants were issued in Fulton County and the fact that defenses were actually interposed in merely 13 instances." *Sanks* v. *Sanks,* CCH *Poverty L. Rep.* ¶ 9270, at 10,514 (Ga. Civ. Ct., Fulton County, Oct. 2, 1968). The inference seems clear that the small number of *defenses* to the dispossessory actions in Fulton County were a direct result of the Georgia statutory provisions requiring the posting of a bond by a tenant as a condition precedent to filing a defense to a dispossessory warrant.

Rather than require an indigent tenant who seeks to appeal a judgment of eviction to post a surety bond that he cannot secure or to surrender possession of his shelter a state, if it wishes, can still protect a landlord from loss of rent from an indigent or insolvent tenant without discouraging or prohibiting rightful appeals. For example, Connecticut could require that an indigent post an appeal bond in the form of a "use and occupancy" bond pending the outcome of an appeal. A tenant seeking review of a judgment of eviction would remain in possession of the premises during the pendency of his appeal and agree to pay into the court all rents to become due, thus protecting the landlord. The landlord by accepting such a bond would in no way prejudice his judgment or claims against the tenant. Upon failure of the tenant to comply with the bond, the landlord would have the right to have the appeal dismissed. A use and occupancy bond would not preclude appeals in actions of summary process because it would not require a large sum of money or other form of liquid collateral that the poor cannot secure. In addition, a use and occupancy bond would offer sufficient and realistic protection to shield any landlord from potential loss.

The refusal of the trial judge in the case before this Court to permit appellants to post a use and occupancy bond (See R. 32, p. 61) clearly resulted in a discrimination against the appellants based solely upon their poverty. It is our contention that the constitutional guarantee of equal protection of the laws is not subject to a construction that allows a man of means to defend his rights in court or to appeal an adverse ruling against him while denying the same opportunity to the indigent. Our courts must be open to all—both rich and poor alike. Equal protection of the laws should not embrace procedures whereby access to the machinery of the courts is made contingent upon an individual posting a bond that he is without means to procure or surrendering possession of his shelter.

II.

THE EQUAL PROTECTION CLAUSE IS NOT LIMITED IN ITS APPLICATION TO CRIMINAL CASES.

In 1956, this Court held that an Illinois appellate scheme, wherein "full direct appellate review" could be had as a practical matter only if the defendant-appellant provided a trial transcript at his own expense, violated the Equal Protection Cause as to an indigent defendant by denying him the appeal that a wealthy litigant could afford. *Griffin* v. *Illinois*, 351 U.S. 12 (1956). The Court declared in *Griffin*: "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy a transcript." *Id.* at 19.

The *Griffin* rationale has never been directly applied by this Court to civil litigation. This has caused some

speculation about whether *Griffin* and its progeny embodied a general interpretation of the Equal Protection Clause that applied only to criminal cases. (See, e.g. *Burns* v. *Ohio*, 360 U.S. 252 (1959), which held that Ohio could not constitutionally require indigent defendants to pay filing fees in criminal appeals.) Yet, on several occasions, this Court has indicated that the Equal Protection Clause should not be limited simply to criminal cases. For example, as early as 1885 this Court noted that the Fourteenth Amendment, "... undoubtedly intended ... that all persons ... should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts ..." *Barbier* v. *Connolly*, 113 U.S. 27, 31 (1885).

In *Smith* v. *Bennett*, 365 U.S. 708 (1961), the Court found it a denial of Equal Protection to require that indigent prisoners pay a $4.00 filing fee before they could petition for a writ of habeas corpus. This Court rejected the notion that merely because a proceeding is called "civil" the protection of the Fourteenth Amendment is not available to prospective indigent litigants. The Court in *Bennett* refused to "quibble" as to whether a habeas corpus proceeding should be termed a civil or criminal action. *Id.* at 712. In declaring Virginia's poll tax statute, which conditioned the vote in state elections upon the payment of a $1.50 tax, in violation of the Equal Protection Clause, this Court emphasized that "lines drawn on the basis of wealth or poverty, like those of race ... are traditionally disfavored." See *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663, 668 (1966). Stating that "lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth

Amendment," this Court concluded in *Harper* that "the affluence of any voter or payment of any fee" constituted such an impermissible line. *Id.* at 665-66.

Mr. Justice Douglas, in dissenting from this Court's denial of certiorari in *Williams* v. *Shaffer*, 385 U.S. 1037 (1967), stated:

> We have recognized that the promise of equal justice for all would be an empty phrase for the poor, if the ability to obtain judicial relief were made to turn on the length of a person's purse. . . . the Equal Protection Clause of the Fourteenth Amendment is not limited to criminal prosecutions. Its protections extend as well to civil matters. *Id.* at 1039.

Several state supreme courts seem to share Justice Douglas's view. They have held unconstitutional statutory requirements that had the effect of denying poor people the access to appellate review enjoyed by others. The Oregon Supreme Court, for example, has held that in a habeas corpus proceeding—a civil action governed by the procedures that apply in all other civil litigation under the law of Oregon—a statutory requirement of an appeal bond denies equal protection to an indigent appellant, and that as to such a litigant the appeal bond requirement must be waived. *Barber* v. *Gladden*, 298 P. 2d 986 (Ore. 1956).

The Supreme Court of Delaware has recognized a similar principle. It held that a statute governing separate maintenance actions violated the Equal Protection Clause in that it permitted plaintiffs (wives and children) to appeal but denied the right to appeal to defendants (husbands). *DuPont* v. *Family Court for New Castle County*, 153 A. 2d 189 (Del. 1959). The Delaware Court stated: "We do not consider it necessary to labor the

point that the grant of a right to appeal to one litigant with an accompanying failure to make the same grant to the other is in law discrimination and, as such, a violation of both the Federal and State Constitution." *Id.* at 192.

III.

THE RIGHT OF AN INDIGENT TENANT TO REMAIN IN POSSESSION OF HIS SHELTER AND APPEAL A JUDGMENT OF EVICTION WITHOUT POSTING A SURETY BOND FOR RENT IS CRUCIAL TO THE PROPER DISPOSITION OF THIS CASE.

A. An Indigent Tenant Should Not Have To Surrender Possession Of His Shelter In Order To Appeal A Judgment Of Eviction.

It has been estimated that approximately eight million families are compelled by segregation and poverty to live in the slums of our central cities. See Schoshinski, "Remedies of the Indigent Tenant: Proposal for Change," 54 *Geo. L. J.* 519 (1966). In *Williams* v. *Shaffer*, 385 U.S. 1037 (1967), Mr. Justice Douglas graphically portrayed the plight of the indigent tenant.

> "The problem of housing for the poor is one of the most acute facing the Nation. The poor are relegated to ghettos and are beset by substandard housing at exorbitant rents. Because of their lack of bargaining power, the poor are made to accept onerous lease terms. Summary eviction proceedings are the order of the day. Default judgments in eviction proceedings are obtained with machine-gun rapidity, since the indigent cannot afford counsel to defend. Housing laws often have a built-in bias against the poor. Slumlords have a tight hold on the Nation." *Id.* at 1040 (Douglas, J., dissenting from denial of certiorari).

This Court has not yet held that a tenant has the right to stay in possession of his shelter until all possible legal remedies have been exhausted; however, it has recognized as a fundamental interest an "indefeasible right of personal security, personal liberty and private property." *Boyd* v. *United States,* 116 U.S. 616, 630 (1886). As a matter of law, then, it would seem appropriate for this Court to recognize the right of an indigent tenant to exhaust all possible legal remedies in an action of summary process before being required to surrender possession of his shelter. Recognition of such a right to possession would seem to be consistent with evidence indicating that family disruption as a result of forced relocation caused by eviction is a crucial factor in perpetuating the poverty cycle. See generally Shoor, *Slums and Social Insecurity,* 68-73 (1964).

B. Appellate Review Is Vital To The Vindication Of An Individual Tenant's Rights And To The Development Of A Just And Equitable Body Of Landlord-Tenant Law.

Several years ago the National Conference on Law and Poverty concluded that as a prerequisite for providing broader legal representation for those seeking adequate housing it would be necessary to undertake "[f]undamental revision of the antiquated landlord-tenant law [through] . . . legal skill, time, perseverence, and freedom from retaliatory pressures." P. Wald, *Law and Poverty*: 1965 *Report to the National Conference on Law and Poverty* 20 (1965). This task would be impossible if new rights and remedies for indigent tenants could not be fashioned in our trial and appellate courts. See Shier, "Protecting the Interests of the Indigent Tenant: Two Approaches," 54 *Calif. L. Rev.* 670 (1966);

Schoshinski, "Remedies of the Indigent Tenant: Proposal for Change," 54 *Geo. L. J.* 519 (1966). Also see Comment, "Tenant Unions: Collective Bargaining and the Low Income Tenant," 77 *Yale L. J.* 1368 (1968) and "Tenant Rent Strikes," 3 *Columbia Journal of Law and Social Problems* 1 (1967), for recent developments in landlord-tenant relations.

This Court formally recognized the significance of litigation in the process of law reform when it noted in *NAACP* v. *Button,* 371 U.S. 415 (1963) that,

> . . .[U]nder the conditions of modern government, litigation may be the sole practicable avenue open to a minority to petition for redress of grievances. *Id.* at 430.

This Court should now expand its statement in *Button* and properly acknowledge the importance of the appellate process in effecting legal and social change. In doing so, this Court should also weigh the inherent injustice that results from the exclusion of any minority group, including the indigent, from the appellate process.

The National Advisory Commission on Civil Disorders warned the Nation that frustration, bitterness, and riot are the end products of a system of government that not only excludes its citizens from the decision-making process but that denies them an opportunity to vindicate their legal rights in courts of law. *Report of the National Advisory Commission on Civil Disorders* 291-293 (paperback ed. 1968). Despite this admonition, the Connecticut appeal bond requirement, and others like it, serves effectively to deny indigent tenants an opportunity to vindicate their legal rights and to fashion new legal remedies through the appellate process.

C. The Existence In Other States Of Surety Bond Requirements That Serve As Effective Preconditions To Appeal In Actions Of Summary Process Makes This An Issue Of National Concern.

As part of our preparation for this case, the National Legal Aid and Defender Association has summarized the relevant statute law in other states (Appendix A) and circulated a questionnaire among its member legal aid offices (Appendix B) in an effort to determine, nationally, the status of indigent persons attempting to appeal in actions of summary process. Our findings indicate that in 42 states statutes, court rules, or a combination thereof set out requirements for a surety bond as a precondition to appeal in actions of summary process. Apparently, some lower court judges ignore their state's statutory bond requirements and waive the existing bond requirements or, in the alternative, set a "use and occupancy bond." See Appendix B. In most states that require the posting of a surety bond such an exercise of judicial discretion appears to be the exception rather than the rule.

The amount of the surety bonds required range from a "sum sufficient" to secure the claim of the adverse party as in Indiana and Connecticut to a Mississippi requirement that in order to stay execution of a writ of possession in ejectment, the appellant must give bond with surety "in a penalty equal to double the value of one year's rent of the land." (Appendix A at 4a) Access to the appellate process should be contingent neither upon an impossible bond requirement such as Mississippi's nor upon the fancy of a lower court magistrate or clerk as in Indiana and New Mexico. See, e.g. Appendix B at 14a where it is noted that in New Mexico the amount of the bond is set by the clerk.

Although there are no national statistics to document the actual number of eviction proceedings initiated each year, local figures indicate that the national number could be staggering. For example, in 1969 there were 42,013 eviction actions filed in Cook County, Illinois. (Information supplied by Peter Deuel, Assistant to Matthew Danaher, Clerk of the Circuit Court of Cook County.) Even this figure probably is low because several responses to our questionnaire indicate that many eviction actions never reach legal aid offices or the courts. See Appendix B at 15a (Cleveland, Ohio).

Some states have recognized the injustice rendered by unreasonable surety bond requirements and have acted to nullify these requirements. For example, Michigan recently amended a statute requiring a bond of nine times the monthly rental value of the premises to require a bond that is "reasonable." See Appendix B at 12a (Michigan). The amended statute permits rent to be paid into court as it becomes due during the pendency of an appeal. Tennessee apparently has abandoned a surety bond requirement as a condition for appeal because of doubt about its constitutionality. See Appendix B at 17a (Tennessee). As both appendices indicate, however, most states require bonds that effectively foreclose indigent tenants in actions of summary process from appellate review.

CONCLUSION

For the reasons stated we respectfully submit that the judgment of the Appellate Division of the Connecticut Circuit Court should be reversed, and that the case be remanded with directions to reinstate the appeal of the appellants from a judgment of eviction and to take whatever action is necessary in accordance with the opinion of the Court.

Respectfully submitted,

ALLAN ASHMAN,
1155 E. 60th Street,
Chicago, Illinois 60637,

Attorney for Amicus Curiae
NATIONAL LEGAL AID AND DEFENDER ASSOCIATION.

APPENDIX A

STATE BOND REQUIREMENTS IMPOSED ON TENANTS WHO WISH TO REMAIN IN POSSESSION OF THEIR SHELTER WHILE APPEALING A JUDGMENT OF EVICTION.

Alabama

Bond required: Twice the yearly value of the rent of the premises. Statutory citation: *Ala. Code* tit. 7, §985.

Alaska

Bond required: Twice the rental value from rendition of judgment until the final judgment. Statutory citation: *Alaska Stat.* §09.45.080.

Arizona

Bond required: with surety for double the yearly rental value. Statutory citation: *Ariz. Rev. Stat. Ann.* §12-1179.

Arkansas

Bond required prior to trial. Amount: double the annual rent. Statutory citation: *Ark. Stat. Ann.* §34-1510.

California

Bond required if tenant is to remain in premises. The stay of execution on appeal is discretionary with the court. The amount of the bond is a sum to be fixed by the judge if stay is granted. Statutory citation: *Civ. Pro. Code* §§9843, 945.

Colorado

Bond required for all costs and damages which may accrue to the adverse party. If the action was for rent as well as possession, the defendant must deposit with the court the amount of rent found due in order to pursue the appeal. Statutory citation: *Colo. Rev. Stat. Ann.* §58-1-18.

(Appendix A)

Connecticut

Bond required: See argument. Statutory citation: *Conn. Gen. Stat. Ann.* §52-542.

Delaware

No bond required.

Florida

Bond required: to pay all costs, damages and expenses. Statutory citation: *Fla. Stat. Ann.* §§83.27 & 83.38. Appellate Rules 5.1; 5.9.

Georgia

Bond required for trial. Statutory citation: *Ga. Code Ann.* §61-303.

Hawaii

Bond required: To be fixed by presiding magistrate to cover all damages which the plaintiff may sustain by reason of the appeal. Statutory citation: *Hawaii Revised Statutes* §666-15.

Idaho

Bond required: with sureties, to the effect that the appellant will pay all damages & costs which may be awarded against him. Statutory citation: *Idaho Code Ann.* §13-203.

Illinois

Bond required in sufficient amount to secure rent, damages and costs, to be ascertained and fixed by the court. Statutory citation: *Ill. Rev. Stat.* ch. 57, §§19, 20.

Indiana

Bond required in a sum sufficient to secure the claim of the appellee. Statutory citation: *Ind. Ann. Stat.* §3-1610.

Iowa

No bond required.

(Appendix A)

Kansas

Bond required: double the value of the use and occupation of the property, from the date of the undertaking until the delivery of the property pursuant to the judgment, and all damages and costs that may be awarded. Statutory citation: *Kan. Stat. Ann.* §61-1011.

Kentucky

Bond required: to secure payment of costs and all damages caused by the appeal. Statutory citation: *Ky. Rev. Stat.* §383.255.

Louisiana

Bond required: amount of the appeal bond to be determined by the court in an amount sufficient to protect the appellee against all such damage as he may sustain as a result of the appeal. Statutory citation: *La Rev. Stat.* §4735.

Maine

Bond required: amount to cover all intervening costs and such reasonable rent of the premises as the judge shall adjudge. Statutory citation: *Me. Rev. Stat. Ann.* tit. 14, §6008.

Maryland

Bond required: to cover all rent in arrears and all costs including the value of the premises during the time tenant shall hold over as a result of the appeal. Statutory citation: *Md. Ann. Code* Art. 53, §4.

Massachusetts

Bond required: in such sum as the court orders, with sureties. Conditioned to pay all rent, damage and loss. Statutory citation: *Mass. Gen. Laws* ch. 239, §5.

Michigan

Bond required: a reasonable amount to be set by the court officer. Statutory citation: *Mich. Stat. Ann.* §27A. 5670(2).

(Appendix A)

Minnesota

Bond required: to cover all costs of the appeal and all rents and other damages justly accruing to the party excluded. Statutory citation: *Minn. Stat.* §566.12.

Mississippi

Bond required: with sureties, in a penalty equal to double the value of one year's rent of the land. Statutory citation: *Miss Code Ann.* §1165.

Missouri

Bond required: sufficient to secure the payment of all damages, costs and rent then due and to accrue. Statutory citation: *Mo. Rev. Stat.* §535.110.

Montana

Bond required: to cover use and occupation for the time of the appeal. Statutory citation: *Mont. Rev. Codes Ann.* §93-7904.

Nebraska

Bond required: to cover costs, amount of judgment, all sums of money that have accrued or may accrue for the use, occupation or rent of the lands or tenements. Statutory citation: *Neb. Rev. Stat.* §25-1907.

Nevada

Bond required: in an amount to be fixed by the court or justice, but which shall not be less than twice the amount of the judgment and costs and the value of the use and occupation of the property during the pendency of the appeal. Statutory citation: *Nev. Rev. Stat.* §40.380.

New Hampshire

No bond required.

New Jersey

No bond required.

(Appendix A)

New Mexico

Bond required: amount to be set by the clerk of the district court. Statutory citation: Rules of Pleading, Practice and Procedure for the Magistrate Courts for the State of New Mexico, Rule 42(b).

New York

No bond required.

North Carolina

Bond required: not less than one year's rent if tenant wishes to remain in possession during appeal. Statutory citation: *N.C. Gen. Stat.* §42-34.

North Dakota

Bond required with surety for all rents for use and occupation of the property and damages from the time of the appeal until the delivery thereof. Statutory citation: *N.D. Cent. Code* §33-11-11.

Ohio

Bond required in appeal from municipal court to the Court of Common Pleas: amount equal to the rent that will be owing to the landlord if he prevails. Statutory citation: *Ohio Rev. Code* §1923.14.

Oklahoma

Bond required: in an amount double the value of the use and occupation of the property from the date of the undertaking until delivery of the property. Statutory citation: *Okla. Stat. Ann.* tit. 15 §973.

Oregon

Bond required: twice the rental value of the property from commencement of the appeal until final judgment. *Ore. Rev. Stat.* §105, 160.

(Appendix A)

Pennsylvania

Bond required: with sureties, for payment of all costs and rent that have accrued or may accrue up to the time of final judgment. Statutory citation: *Pa. Stat.* tit. 68, §250.506.

Rhode Island

No appeal in forcible entry and detainer actions. Statutory citation: *R.I. Gen. Laws Ann.* §34-19-8.

South Carolina

Bond required: for all costs and damages which the landlord may sustain thereby. Statutory citation: *S.C. Code Ann.* §41-113.

South Dakota

Bond required: to cover use and occupation from the time of the appeal until the delivery of the property. Statutory citation: *S.D. Code* §33.0717.

Tennessee

Bond required: to cover costs and damages and the rents during the litigation. Statutory citation: *Tenn. Code Ann.* §23-1630 (note 1)

Texas

Bond required: to be approved by the Justice conditioned to pay all costs and damages which may be adjudged. Statutory citation: Rule 749. *Vernon's Texas Rules of Civil Procedure.*

Utah

Bond required: to secure the payment of costs of the appeal and the judgment. Statutory citation: *Rules of Civil Procedure* Rule 73 (c).

(Appendix A)

Vermont

Bond required: sufficient to pay the rent then due, and intervening rent, damages and costs. Statutory citation: *Vt. Stat. Ann.* tit. 12, §4857.

Virginia

Bond required: to cover all damages, costs and fees which may be awarded and all actual damages incurred. Statutory citation: *Va. Code Ann.* §8-477.

Washington

No bond required.

West Virginia

Bond required in suits for possession and rent: double the amount of damages plus one year's rent. In suits for possession only: one year's rent plus an additional sum between $50 and $100. Statutory citation: *W. Va. Code Ann.* §60-15-2.

Wisconsin

Bond required: for rent, costs and damages. Statutory citation: *Wis. Stat.* §29.11.

Wyoming

Bond required: to guarantee payment of accrued costs, costs to accrue and damages for the wrongful detention of the property. Statutory citation: *Wyo. Stat. Ann.* §1-690.

APPENDIX B

QUESTIONNAIRE SENT TO ALL CIVIL LEGAL AID OFFICES AND SELECTED RESPONSES THERETO.

MEMORANDUM Date: May 6, 1969

To: All Civil Offices
From: Allan Ashman
Re: Requirement of Posting Surety Bond in Order to Appeal Eviction

The NLADA is preparing an *amicus* brief in the case of *Simmons* v. *West Haven Housing Authority* (Supreme Court Docket No. 1232). A motion to proceed *in forma pauperis* was granted and probable jurisdiction was noted on April 7, 1969 (37 L.W. 3379). The main issue is whether a Connecticut statute (C.G.S.A. §52-542) which requires that appellants, as a precondition to their appeal from a judgment of eviction, post a bond with surety for rent which might accrue during the pendency of their appeal, regardless of their financial ability to obtain such a bond, amounts to an invidious discrimination among citizens on the basis of wealth, in violation of the Fourteenth Amendment.

The NLADA wishes to stress the national implications of the question at issue and urgently requests the following information from you.

1. Does your state have such a "precondition" to trial or appeal in an eviction case?
2. What is the practice with regard to posting a surety bond for rent in eviction cases in your state if there is no statutory requirement?
3. What cases involving this issue have been disposed of by your organization?
4. Could you provide us with available statistics on evictions in your area?

(Appendix B)

5. If the answer to question 4 is negative, could you provide us with the names of any persons or organizations who might keep such statistics, either for your area or nation-wide?

We would appreciate any information which you can give us on these questions. We have only a few weeks in which to prepare this brief and *urgently* request your immediate attention.

SELECTED RESPONSES.

Arizona

"In answer to your memorandum of May 6, 1969 regarding Amicus brief in *Simmons* v. *West Haven Housing Authority*, Arizona has a statute as to a bond on *appeal* in an eviction case. See Arizona Revised Statute Section 12-1179.

We had a case sometime ago on this matter and as our client could not afford to post the appeal bond we sought review by certiorari rather than appeal.

The court held that certiorari was not available as there was appeal available. The case was not taken to a higher court as the Housing Authority decided to let our client stay on."

May 21, 1969

Legal Aid Society of the
Pima County Bar Association

Illinois

"Re: Requirement of Posting Surety Bond in order to appeal eviction.

In Illinois our Forcible Entry and Detainer statute covers evictions, and requires a defendant to post an appeal bond in sufficient amount to secure accruing rent, damages and costs during the pendency of the appeal and until possession is turned over to the plaintiff if defendant loses the appeal. It would be virtually impos-

sible for a poor defendant to obtain a surety bond in Peoria from a commercial bond company. I do not know whether the Court would accept individuals as surety; it's doubtful whether a poor defendant would have a friend with sufficient finances to be an acceptable surety.

We have not appealed an eviction judgment, therefore, we have no experience to report the number of cases where an appeal has been made. To my knowledge there have not been any appeals of an eviction."

May 9, 1969 — Greater Peoria Legal Aid Society

Kentucky

"In response to your letter of May 6, 1969, in regard to the *Amicus* brief in *Simmons* v. *West Haven Housing Authority*, please be advised as follows:

1. K.R.S. 383.255 requires a bond in an appeal to the Circuit Court from a judgment of eviction in a magisterial court. The bond is to secure the payment of costs and all damages caused by the appeal.

K.R.S. 383.260 and *Parker* v. *Smith* 211 Ky. 624, 277 SW 986 provide that a landlord may recover double rent during the occupancy of the tenant after forcible detainer proceedings have been begun and also a reasonable attorney's fee if the traverser fails to prosecute his traverse with effect."

May 19, 1969 — Northern Kentucky Legal Aid Society, Inc.

Maine

"In response to the questions of your letter of May 6th I have checked the applicable Maine Statutes and case law and contacted several of our Staff Attorneys. The results are indicated below in the format in which you presented them.

(Appendix B)

1. ME. REV. STAT. ANN. tit. 14, §6008 (1964) indicates that '[W]hen the Defendant appeals, he shall recognize in like manner to the Plaintiff, conditioned to enter the action and to pay all intervening costs and such reasonable rent of the premises, as the Judge shall adjudge, if the judgment is not reversed.'

Merrill v. *Hinckley*, 49 Me. 40 (1860) and *Dennison* v. *Mason*, 36 Me. 431 (1953) seem to be the only two cases decided under this statute. They both hold that the terms of the statute are controlling and mean that only reasonable rent is allowed. Notwithstanding these two cases, in some communities local practice is to require a bond in the amount of twice the rental value."

May 21, 1969 — Pine Tree Legal Assistance, Inc.
Portland Area Office

Massachusetts

"In response to your memorandum of May 6, 1969, I submit the following information:

1. Massachusetts does have an appeal bond requirement (see Massachusetts General Laws, Chapter 239, Section 5). The bond must be filed within 24 hours and is conditioned upon securing rent already accrued, any damage to the property, and future rent. It should also be noted that a defendant in an eviction case cannot obtain a trial by jury without appealing from the District Court judgment.

2. I know of no general practice throughout the District Courts of Massachusetts. However, in the two District Courts in which I have confronted this issue, the bond requirements were automatically set at $500 secured by $500."

May 15, 1969 — Massachusetts Law Reform Institute
Boston, Massachusetts

(Appendix B)

Michigan

"Re: Requirement of Posting Surety Bond in Order to Appeal Eviction

Our state does have a requirement that a lessee post bond when appealing an eviction. Under the older law the amount was pegged at nine times the monthly rental. Legislation enacted last October revised this requirement to an amount which is reasonable. To the best of my knowledge we have handled only one case under the new law which has gone as far as appeal. In it the judge set bond at a figure slightly above the amount of the money judgment awarded plus the rent which would have been paid between the time of judgment and the setting of the bond. In addition he ordered that future rent be paid into the court, as a condition of prosecuting the appeal."

May 21, 1969 Washtenaw County Legal Aid Society
Ann Arbor, Michigan

"In reply to your questions of May 6, 1969 about bond requirements in Michigan the answers are as follows:

1. Yes, M.C.L.A. 600.5670 requires that a bond be required with a penalty to be fixed at a reasonable amount.

a) The practice is for the Court to allow the tenant to pay the judgment into court and the rent into court as it becomes due while the appeal is pending."

May 19, 1969 Neighborhood Legal Services Centers

"In response to your request dated May 6, 1969 regarding surety bond to appeal eviction, the following applies:

(Appendix B)

The state of Michigan does have a 'precondition' to appeal an eviction case. Please see an attached copy of the Michigan Law No. 600.5670.

However, the practice is to use Michigan Court Rule 763.11 (see attached) when there is an inability to post the bond based on financial reasons.

Please see the below four cases processed pursuant to the above procedure.

a) Margaret Elgleman vs Verne C. Hampton
Oakland County, Circuit Court,
CA 68-45918

b) Milton E. Evons vs Robert F. Lyle
Oakland County, Circuit Court,
CA 68-46994

c) Mary Gilbert vs Verne C. Hampton
Oakland County, Circuit Court,
CA 68-50171

d) Marie Gilbert vs Verne C. Hampton
Oakland County, Circuit Court,
CA 68-50172

Michigan Court Rules
§763.11

Stay of Proceedings without Bond. If a party required to give a bond under these rules for purposes of supersedeas, appeal or otherwise, is unable to give such bond by reason of poverty, the judge may, upon due proof of inability for such reason, limit or eliminate the requirement for a surety upon such bond, upon such conditions and for such reasonable time as the judge may determine."

May 20, 1969 Oakland County Legal Aid Society

(Appendix B)

New Mexico

"Re: Requirement of Posting Surety Bond to Appeal Eviction—Memo of May 6, 1969

2. In New Mexico, all appeals from Magistrate Court to District Court must be by bond. Rule 42(b)—Rules of Pleadings, Practice and Procedure for the Magistrate Courts of the State of New Mexico (1968). It is the practice here for the Clerk of the District Court to set the amount of the bond on appeal. This is generally twice the amount of the judgment in Magistrate Court."

May 9, 1969 Legal Aid Society of Albuquerque

North Carolina

"In response to your letter of May 6, 1969, I am submitting the following information relating specifically to five questions which you have raised:

1. North Carolina requires the posting of a Bond amounting to not less than one year's rent prior to the time that a tenant may *stay in possession* and appeal an adverse ruling of a Magistrate. As you will notice, our law does not require the posting of a Bond prior to the time that an appeal is allowed, but only requires such a Bond if the tenant chooses to stay in possession and appeal.

2. We might note that there is no statutory provision or rule of practice allowing this Bond requirement to be suspended."

May 14, 1969 Legal Aid Society of Mecklenburg County
Charlotte, North Carolina

Ohio

"3. What cases involving this issue have been disposed of by your organization? 400-500 per year

(Appendix B)

4. Could you provide us with available statistics on eviction in your area? 2591 in 1968, Hamilton County, Ohio"

May 21, 1969 — The Legal Aid Society of Cincinnati

"In reply to your request for information pertaining to the bond required when appealing from a judgment of eviction in the State of Ohio and to the available statistics on evictions in our area, the following remarks may be of some assistance as you draft your brief.

In Cleveland, an action for forcible entry and detainer is brought in the Cleveland Municipal Court. In order to continue that proceeding for more than eight days beyond the date upon which the action was filed, the bond required is for an amount equal to the rent that will be owing to the landlord if he prevails in the action. Ohio Revised Code, sec. 1923.08. An appeal of the Municipal Court decision may then be taken to the Court of Common Pleas in which case the same bond amount is required. Ohio Revised Code, sec. 1923.14. If further appeals are taken to the Court of Appeals and the Supreme Court, the bond requirements that must be met are the same as would apply in any other appeal situation. As a rule of thumb, the appellate courts will compute the potential amount of rent owed plus the legal expenses incurred by the landlord in defending the appeal and then require a bond equal to approximately twice that amount.

Our offices presently defend six hundred eviction actions a year. Of course, since the great majority of eviction problems never reach our offices or the courts, this figure is relatively meaningless."

May 6, 1969 — Legal Aid Society of Cleveland

(Appendix B)

Pennsylvania

"This is in response to your memorandum of May 6, 1969 regarding the 'Requirement of Posting Surety Bond in Order to Appeal Eviction.'

1. The (Pennsylvania) Landlord and Tenant Act of 1951 provides that, in an eviction case, 'either party may appeal (from the judgment of the justice of the peace) to the next Court of Common Pleas *upon filing in that court a bond with one or more sufficient sureties, conditioned for the payment of all costs and rent that have accrued or may accrue up to the time of final judgment* and for damages assessed, if any, in case the judgment shall be affirmed. . . . Such appeal shall not be a supersedeas to the writ of possession in any case except upon special allowance of the court to which the appeal is taken.' 1951, April 6, P.L. 69, Art. V, §506; 1953, July 25, P.L. 578 §1; 68 P.S. §250.506. (Emphasis added).

An appeal, from a judgment of a Court of Common Pleas 'in an action of ejectment or other action involving the title to or possession of real property where the judgment below is against the party in possession, shall operate as a supersedeas if the appellant gives bond with sufficient surety or sureties in double the sum he will probably have to pay, in case the judgment be affirmed. . . .' 1897, May 19, P.L. 67 §10; P.S. §1143.

However, the court from which the appeal is taken may 'make such orders as to right and justice shall belong relative to the security offered or entered, either as to approval thereof, addition thereto or substitution therefore whenever a proper case shall be made to appear requiring the action of said court.' 1897, May 19, P.L. 67, §17; 12 P.S. §1155.

Where a lease contains a confession of judgment clause, and the tenant must defend by commencing an action to open judgment and requesting a stay of eviction, the

(Appendix B)

requirement of security is within the discretion of the court.

2. In practice, the local courts usually either waive the surety bond, or require only a nominal or near-nominal amount ($1, $5, or $10)."

May 15, 1969 Neighborhood Legal Services Association
Pittsburgh, Pa.

Tennessee

"In reply to your memorandum of May 6 concerning the amicus brief in the case of *Simmons* v. *West Haven Housing Authority*, I have enumerated the questions and answers below:

1. Does your state have such a 'precondition' to trial or appeal in an eviction case?

Yes. By statute, a tenant can not appeal an eviction case while retaining possession unless a bond is posted for the costs. It can be appealed on the pauper's oath, however, if the tenant surrenders possession.

2. What is the practice with regard to posting a surety bond for rent in eviction cases in your state if there is no statutory requirement?

The practice, however, is not to require the bond. Even though the statute has not been challenged formally, it is not generally enforced due to its questionable constitutionality.

3. What cases involving this issue have been disposed of by your organization?

We had only one case challenging the board, but it was favorably disposed of without a trial in that the court felt the statute was unconstitutional and thereby inoperative."

May 15, 1969 The University of Tennessee,
College of Law
Legal Clinic
Knoxville, Tennessee

(Appendix B)

Texas

"In reply to your letter of May 6, 1969, relative to posting bond in order to appeal eviction, will state that evictions under the Texas practice are governed by statutes set forth in Title 64, V.A.C.S., Articles 3973 to 3975b and 3992 and Rules 739 to 755, Vernon's Texas Rules of Civil Procedure.

In answer to your specific questions:

(1) We do have a precondition to appeal in an eviction case by posting bond under Rules 749 and 750 and this has been construed to be mandatory and an Affidavit of Inability to Pay Costs may not be filed. Vincent vs. McPherson, Tex. Civ. App., 54 SW2d 829, no writ history."

May 8, 1969

Legal Aid & Defender Society of
Travis County, Texas
Austin, Texas

"Your letter of May 6, 1969, requested information from this office concerning whether or not Texas has a statute which requires an evicted person to post a bond for rent as a precondition to trial or appeal.

Rule 749 I.R.C.P. provides that either party may appeal a Justice Court decision in a 'Forcible Entry and Detainer Suit' to the County Court. In order for either party to appeal such a judgment, the appellant must post 'a bond to be approved by said justice, and payable to the adverse party, conditioned that he will prosecute his appeal with effect, or pay all costs and damages which may be adjudged against him.' Therefore, a tenant who loses in the Justice Court and is evicted, must post a bond in order to appeal his eviction to the County Court. This bond is required in every case."

May 12, 1969

Waco Legal Aid Clinic
Waco, Texas

(Appendix B)

West Virginia

"Note Re: NLADA Amicus Brief in *Simmons* v. *West Haven Housing Authority* (U.S. S. Ct. Docket No. 1232)

The State of West Virginia does indeed have a 'precondition' imposed on appeals from orders of eviction.

In summary, evictions are judicially accomplished by bringing an action for unlawful detainer before a justice of the peace. Such an action may request damages and possession, or possession alone. If the plaintiff-landlord prevails, the justice of the peace issues a writ of possession (and if requested, assesses damages), appeal to a court of record ostensibly lies as a matter of right, and on appeal, the facts are tried *de novo.*

An appeal bond with surety is required by the following provision:

W. Va. Code §60-15-2

Appeal Bond

The appeal shall not be granted by the justice unless, within ten days after the judgment is rendered . . . bond with good security, to be approved by the justice . . . is filed with him, with condition to the effect that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him on such appeal. . .

. . . In suits . . . for the unlawful detention of real estate, if judgment be rendered for recovery of possession of the premises, either with or without damages for detention, *the bond shall be in a penalty double the amount of damages, where judgment has been rendered for damages for the detention, together with an amount sufficient,* in the opinion of the justice, or of the circuit or other appellate court or judge thereof, when the appeal is

granted by such court or judge, *to cover one year's rent of the premises. In such suits where judgment is not for damages for detention,* the *bond shall be* in a penalty equal to an amount *sufficient . . . to cover one year's rent of the premises, and an additional sum of not less than fifty nor more than one hundred dollars.* [Emphasis added]

Interpretation:

In essence, this statute requires bond for appeal of an eviction (possession) order of a justice of the peace. There are two circumstances described.

(1) Judgment rendered for complainant for possession and for damages for unlawful detainer. Bond here would be twice the damages plus an amount sufficient to cover one year's rents.

(2) Judgment for possession only. Bond requisite is an amount equal to one year's rent plus an additional 50 to 100 dollars (discretionary with justice).

Case law in West Virginia has held that the requirement of bond is mandatory and that no appeal shall be granted unless a bond with good security, approved by the justice, is filed with him. [*Staats* v. *McCarty,* 130 W. Va. 240, 43 S.E. 2d 826 (1947); *Powell* v. *Miller,* 41 W. Va. 371, 23 S.E., 557 (1895)].

Curiously enough, the legislature of the State has seen fit to heap insult upon injury in its erection of barriers. There is required the payment, in advance of appeal, of $5.00 for cost incurred by the clerk of the reviewing court. [West Virginia Code, §59-1-11]. In a spasm of great wisdom and compassion, the legislature has provided for the waiver of this $5.00 where the indigent person submits an affidavit of poverty "certified by the chief executive officer of a duly chartered legal aid society" to the proper collecting officer. (There is one

legal aid society in West Virginia, servicing three of the fifty-five counties) [West Virginia Code, §59-1-36].

The forma pauperis provisions in the state do not specifically authorize waiver of the bond or any part thereof or any reduction in the statutory amount.

It is the general practice in this office, when appealing an eviction to secure the requisite bond by soliciting the assistance of the department of public welfare (if the particular social worker is cooperative) or one of the local charitable-social agencies. All too often, however, obtaining the bond has been an impossibility and the client has been forced to give up any attempt to appeal."

May 13, 1969

Legal Aid Society of Charleston
Charleston, West Virginia